Re Scomi Group Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-28JM-7–04 OF 2021
NADZARIN WOK NORDIN JC
4 OCTOBER 2021

Companies and Corporations — Judicial management — Application for judicial management order — Secured creditors opposed application — Whether public listed company could apply for judicial management order — Whether failure to register charge was fatal — Whether secured creditors had right to veto application — Companies Act 2016 ss 403(b) & 409(b)

Statutory Interpretation — Construction of statute — Literal and purposive approach — Whether the maxim noscitur a sociis applied — Whether literal or purposive interpretation approach should be applied — Whether provision was plain, clear and unambiguous — Companies Act 2016 s 403(b) — Interpretation Acts 1948 & 1967 s 17A

This was an ex parte originating summons ('OS') filed by the applicant pursuant to ss 404 and 405 of the Companies Act 2016 seeking for, inter alia, an order that the applicant be placed under judicial management. Malayan Banking Bhd ('Maybank') and one See Song & Sons Sdn Bhd ('SSSSB') appeared at the hearing of the OS to oppose the OS. SBI Spectrum Sdn Bhd ('SBI'), a proposed intervener was also present at the hearing of the OS whereby the court had granted order in terms by consent for SBI to be an intervener in the proceeding. SBI nevertheless maintained that it was a secured creditor. The applicant, in support of its OS contended that judicial management was introduced to rehabilitate companies and therefore, the court should adopt a purposive interpretation with regards s 403(b) of the Companies Act 2016. Before embarking on the substance of the OS, the preliminary issues that arose for the determination of the court were: (a) whether the applicant, being a publicly listed company could apply for a judicial management order ('JM'); and (b) whether an objection of a secured creditor to the application for the JM would disentitle the applicant from continuing with the OS.

Held, dismissing the application with costs:

(1) The court was of the view that the Companies Commission of Malaysia consultation document which had discussed the proposed amendments to the Companies Act 2016 wherein mention was made as to the JM not

being available to companies under the Capital Markets and Services Act 2017 ('the CMSA') was not a conclusive authority for the court to determine if the CMSA was applicable to listed companies but was merely a persuasive document which the court take note of (see para 19).

(2) After considering the maxim of *noscitur a sociis*, the court held that the same did not apply in the present circumstances as the said subsections referred to ie s 403(a) and (b) of the Companies Act 2016 were two different subsections/provisions in the Companies Act 2016 and thus were meant to be read disjunctively and of which one subsection was not meant to influence the other. The court also examined the Corporate Law Reform Committee final report on the Companies Act 1965 entitled 'Review of the Companies Act 1965 — Final Report' and the Consultative Document on the Proposed Companies Act (Amendment) Bill 2020 and found that the same did not assist the applicant's contentions as it was only a proposal made in adopting the Companies Act 2016 and that not all the proposals referred to therein had been adopted and was only a document of persuasive value for the court to come to its decision (see paras 21–22).

(3) Upon reading the CMSA, the court concluded from a plain reading of the CMSA, that it was, inter alia, clear that any body corporate formed or incorporated or existing within or outside Malaysia which would include any foreign company which was not a corporation sole, co-operative society or trade union whose shares were quoted on a stock market would be governed by the CMSA. The learned judicial commissioner was unable to agree with the applicant with regards the statutory interpretation on the applicability of the CMSA only to companies that were involved in activities or markets in the capital market or which were intermediaries in the capital market. The court could not read words into s 403(b) of the Companies Act 2016 which were plain, clear and unambiguous. Section 403(b) of the Companies Act 2016 applied to all companies whose shares were quoted on a stock market of a stock exchange as was the situation here with the applicant, and the applicant as a listed company under the CMSA could not avail himself of the judicial management corporate rescue mechanism under Subdivision 2 of Division 8, Part III of the Companies Act 2016 (see paras 23, 25 & 29).

(4) Maybank was a secured creditor of the applicant as it had granted the applicant, inter alia, term loans, letter of credit and a bank guarantee facility which were secured by a memorandum of deposit and a supplemental memorandum of deposit. As for SSSSB, the charge under the memorandums of deposit and loans had not been registered. Section 325(1) of the Companies Act 2016 provided that it was the duty of the applicant to register the charge. The failure of the applicant to do

so, however, did not affect the validity or the effect of the charge as there was no legal provision or authority shown to the court by the applicant's counsel to support such a contention and SSSSB was, nevertheless, a secured creditor of the applicant with a registered charge (see paras 30, 32–34 & 37).

(5) The usage of the word 'secured creditor' in s 409(b) of the Companies Act 2016 showed that Parliament had specifically and expressly included the term 'secured creditor' to the said subsection and thus confined the right to object to a judicial management application to only two categories of creditors. The literal approach must be applied in reading the said subsection where the construction of the words was plainly clear and unambiguous. Maybank and SSSSB were secured creditors who had a right to veto the JM application and as they had done so, the applicant was not entitled to obtain a judicial management order pursuant to ss 403(b) and 409(b) of the Companies Act 2016 respectively (see paras 39–40).

[Bahasa Malaysia summary

Ini adalah saman pemula ex parte ('SP') yang difailkan oleh pemohon menurut ss 404 dan 405 Akta Syarikat 2016 yang memohon suatu perintah bahawa pemohon diletakkan di bawah pengurusan kehakiman. Malayan Banking Bhd ('Maybank') dan See Song & Sons Sdn Bhd ('SSSSB') telah menghadiri pendengaran untuk membantah SP tersebut. SBI Spectrum Sdn Bhd ('SBI'), sebagai seorang pencelah yang dicadangkan juga hadir di pendengaran SP tersebut di mana perintah persetujuan telah dimasukkan untuk SBI menjadi pencelah di dalam prosiding tersebut. SBI bagaimanapun menegaskan bahawa mereka adalah pemiutang bercagar. Pemohon, menghujahkan bahawa pengurusan kehakiman bertujuan memulihkan syarikat dan oleh itu, mahkamah harus menerima pakai tafsiran yang bertujuan berkenaan dengan s 403(b) Akta Syarikat 2016. Sebelum memutuskan SP tersebut, isu-isu awal yang timbul untuk penentuan mahkamah adalah: (a) sama ada pemohon sebagai syarikat tersenarai awam boleh memohon perintah pengurusan kehakiman ('PK'); dan (b) sama ada bantahan pemiutang utama kepada permohonan PK akan membuatkan pemohon terhalang daripada meneruskan SP ini.

Diputuskan, membenarkan permohonan dengan kos:

(1) Mahkamah berpendapat bahawa dokumen rundingan Suruhanjaya Syarikat Malaysia untuk membincangkan cadangan pindaan kepada Akta Syarikat 2016 di mana disebut mengenai PK tidak tersedia untuk syarikat-syarikat di bawah Akta Pasaran Modal dan Perkhidmatan 2017 ('APMP') bukanlah dokumen yang mengikat mahkamah untuk menentukan sama ada APMP terpakai kepada syarikat tersenarai tetapi dokumen tersebut hanyalah sebagai dokumen untuk membantu

A mahkamah membuat keputusan (lihat perenggan 19).

(2) Selepas mempertimbangkan maxim *nocitur sociis*, mahkamah ini berpendapat bahawa maxim ini tidak terpakai dalam keadaan kes ini kerana subseksyen tersebut iaitu s 403(a) dan (b) Akta Syarikat 2016 adalah dua subseksyen/peruntukan yang berbeza di dalam Akta Syarikat 2016 dan harus dibaca berasingan dan yang mana satu subseksyen tidak berkaitan dengan peruntukan yang lain. Mahkamah ini juga meneliti laporan akhir Jawatankuasa Pembaharuan Undang-Undang Korporat Akta Syarikat 1965 bertajuk 'Kajian Semula Akta Syarikat 1965 — Laporan Akhir' dan Dokumen Perundingan mengenai Cadangan Akta Syarikat (Pindaan) 2020 dan mendapati bahawa dokumen ini tidak menyokong pemohon kerana ianya hanyalah cadangan yang dibuat di dalam mengguna pakai Akta Syarikat 2016. Bukan semua cadangan yang dirujuk di dalamnya telah diterima pakai dan ia hanya suatu dokumen yang persuasif untuk mahkamah membuat keputusannya (lihat perenggan 21–22).

(3) Setelah membaca peruntukan-peruntukan APMP, mahkamah ini membuat kesimpulan bahawa adalah jelas bahawa mana-mana pertubuhan korporat yang dibentuk atau diperbadankan atau sedia ada di dalam atau di luar Malaysia yang akan merangkumi mana-mana syarikat asing yang bukan satu perbadanan, koperasi atau kesatuan sekerja yang sahamnya disebut harga di pasaran saham ditadbir oleh APMP. Pesuruhjaya kehakiman terpelajar tidak menerima hujahan pemohon berkenaan tafsiran berkanun mengenai kebolehgunaan APMP hanya kepada syarikat yang terlibat dalam aktiviti atau pasaran di pasaran modal atau yang menjadi perantara dalam pasaran modal. Mahkamah ini tidak dapat membaca perkataan dalam s 403(b) Akta Syarikat 2016 yang jelas dan tidak boleh dipertikaikan. Seksyen 403(b) Akta Syarikat 2016 terpakai kepada semua syarikat yang sahamnya disebut harga di pasaran bursa saham seperti di dalam keadaan kes ini. Pemohon sebagai syarikat tersenarai di bawah APMP tidak dapat memanfaatkan mekanisme penyelamatan korporat pengurusan kehakiman di bawah Subbahagian 2 Bahagian 8, Bahagian III Akta Syarikat 2016 (lihat perenggan 23, 25 & 29).

(4) Maybank adalah pemiutang bercagar pemohon kerana bank ini telah memberikan pemohon, satu pinjaman bertempoh, surat kredit dan kemudahan jaminan bank yang dijamin oleh memorandum deposit dan memorandum deposit tambahan. Bagi SSSSB, cagaran di bawah memorandum deposit dan pinjaman belum didaftarkan. Seksyen 325(1) Akta Syarikat 2016 memperuntukkan bahawa adalah menjadi kewajipan pemohon untuk mendaftarkan caj tersebut. Kegagalan pemohon untuk berbuat demikian, bagaimanapun, tidak menjejaskan keesahan atau tuntutan ini kerana tidak ada peruntukan undang-undang atau kuasa

yang dihujahkan oleh peguam pemohon untuk menyokong tuntutan mereka. SSSSB bagaimanapun merupakan pemiutang bercagar pemohon dengan cagaran berdaftar (lihat perenggan 30, 32–34 & 37).

(5) Penggunaan perkataan 'pemiutang bercagar' di dalam s 409(b) Akta Syarikat 2016 menunjukkan bahawa Parlimen secara jelas memasukkan istilah 'pemiutang bercagar' kepada subseksyen tersebut dan mengehadkan hak untuk membantah permohonan pengurusan kehakiman kepada hanya dua kategori pemiutang. Pendekatan literal mesti digunakan dalam membaca subseksyen tersebut di mana peruntukan tersebut adalah jelas dan tidak boleh dipertikaikan. Maybank dan SSSSB adalah pemiutang dijamin yang mempunyai hak untuk menentukan permohonan PK dan memandangkan kedua-duanya telah berbuat demikian, pemohon tidak berhak untuk mendapatkan perintah pengurusan kehakiman menurut ss 403(b) dan 409(b) Akta Syarikat 2016 (lihat perenggan 39–40).]

Cases referred to

A Panjaram, Re [1992] 1 MLJ 467, HC (folld)
Faekah bt Hj Husin & Ors v Menteri Besar Selangor (Pemerbadanan) [2021] 3 MLJ 893, FC (folld)
Gulf Business Construction (M) Sdn Bhd v Israq Holding Sdn Bhd [2010] 5 MLJ 34, CA (folld)
Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2018] 2 MLJ 590, FC (refd)
Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd and another suit [2019] 8 MLJ 473, HC (refd)
Maple Amalgamated Sdn Bhd & Anor v Bank Pertanian Malaysia Bhd [2021] MLJU 1245, FC (refd)
Ng Kim Fong v Menang Corporation (M) Bhd [2020] MLJU 644, CA (folld)
Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721, FC (consd)
Tenaga Nasional Bhd v Ichi-Ban Plastic (M) Sdn Bhd and other appeals [2018] 3 MLJ 141; [2018] 3 CLJ 557, FC (consd)
Tidalmarine Engineering Sdn Bhd v Portneka Sdn Bhd & Anor [2020] MLJU 2526, HC (refd)
View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2018] 2 MLJ 22, FC (refd)

Legislation referred to

Capital Markets and Services Act 2007 ss 2, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 317, 317A, 318, 319, 320, 320A, 321
Companies Act 1965 (repealed by Companies Act 2016)
Companies Act 2016 ss 325(1), 403(a), (b), 404, 405, 408(1)(b)(ii), 409,

409(b), Division 8, Part III, Subdivision 2
Interpretation Acts 1948 and 1967 s 17A, Part VII
Trade Unions Act 1959 s 12(2), (3)

Malik Imtiaz (S Raven, Lim Yvoone, Siti Nur Amirah Aqilah bt Adzman and Muhammad Ahnaf with him) (S Ravenesan) for the applicant.
CS Mong (Medha Ong with him) (Lee Hishammuddin Allen & Gledhill) for Malayan Banking Bhd.
Shahman Sangaran (Cheryl Leong with him) (Kumar Jaspal Quah & Aishah) for the intervener (SBI Spectrum Sdn Bhd).
Nimalan Devaraja (Janice Ooi with him) (Skrine) for See Song & Sons Sdn Bhd.

Nadzarin Wok Nordin JC:

[1] This is an ex parte originating summons ('OS') filed by Scomi Group Bhd (applicant) pursuant to ss 404 and 405 of the Companies Act 2016 seeking for, inter alia, an order that the applicant be placed under judicial management of a judicial manager.

[2] The matter was called up for hearing on 24 August 2021 wherein counsels for Malayan Banking Berhad ('Maybank'), and one See Song & Sons Sdn Bhd ('SSSSB') respectively who had filed their respective notice of intention to appear at the hearing of the OS to oppose the OS as well as for SBI Spectrum Sdn Bhd ('SBI'), a proposed intervener who had filed an application to intervene in encl 8 were present ('encl 8').

[3] On the hearing date for the said OS before me, the court had granted order in terms by consent for encl 8 wherein SBI was, inter alia, allowed to be an intervener in the proceeding. However, counsel for the applicant, Dato Malik Imtiaz, had submitted that SBI should make an election as they had made the application in encl 8 whilst at the same time claiming that they are a secured creditor. In reply counsel for SBI, En Shahman Sangaran, argued that they had filed encl 8 due to an abundance of caution and they maintained that SBI was a secured creditor.

[4] Be that as it may, the respective counsels for the parties before me had before embarking on the substance of the OS itself, had agreed to the following preliminary issues to be decided by this court:

(a) whether the applicant, being a publicly listed company ('PLC') can apply for a judicial management order ('JM'); and

(b) whether a secured creditor(s) of the applicant who objects to the JM being applied for will disentitle the applicant herein to continue with the OS.

[5] The applicant had amongst others submitted on the above issues that: **A**

(a) JM was introduced to rehabilitate companies;

(b) this court should adopt a purposive interpretation with regards s 403(b) of the Companies Act 2016; and **B**

(c) the said statutory provision should be interpreted in the context of the statute as a whole and harmoniously with in *pari materia* legislation.

PARTIES RESPECTIVE POSITIONS **C**

[6] The applicant had also urged this court to adopt the maxim *noscitur a sociis* in instances where the meaning is unclear.

[7] The respective interveners, Maybank, SSSSB and SBI ('interveners') of course argue to the contrary and state that s 403(b) of the Companies Act 2016 is clear in that the JM procedure is not applicable to the applicant as it is a company which is subject to the Capital Markets and Services Act 2007 and that where the secured creditors have objected to the application, the court shall dismiss the said application in accordance withs 409(b) of the Companies Act 2016. **D** **E**

COURT'S FINDINGS

[8] Section 403(b) of the Companies Act 2016 reads as follows: **F**

> This subdivision shall not apply to:
>
> (a) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia; and
>
> (b) a company which is subject to the Capital Markets and Services Act 2007. **G**

[9] The subdivision referred to above refers to Subdivision 2 of Division 8 Part III of the Companies Act 2016 which relates to the division in respect of corporate rescue mechanisms in particular judicial management. **H**

[10] Thereafter, s 409(b) of the Companies Act 2016 provides that:

> Subject to sub-s 405(5), the court shall dismiss an application for a judicial management order if it is satisfied that: **I**
>
> (a) a receiver or receiver and manager referred to in sub-para 408(1)(b)(ii) has been or will be appointed; or
>
> (b) the making of the order is opposed by a secured creditor.

[11] It is pertinent to note that the word 'or' which appears in s 409(b) of the Companies Act 2016 was inserted by way of the Companies Amendment Act 2019 (Act A1605) which came into force on 15 January 2020 by way of PU (B) 16 of 2020.

Section 403(b) of the Companies Act 2016 and Capital Markets and Services Act 2007

[12] I now come to the arguments raised by the applicant's counsel in support of their contentions. Let me first address s 403(b) of the Companies Act 2016 where this court was asked to apply the purposive interpretation approach in determining the meaning of and the words in the said section.

[13] In doing so, this court had noted s 17A of the Interpretation Acts 1948 and 1967 ('the Interpretation Acts') which was referred to by counsel for the applicant and the case of *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2018] 2 MLJ 590. Section 17A of the Interpretation Acts provides:

> In the interpretation of a provision of an act, a construction that would promote the purpose or object underlying the act (whether that purpose or object is expressly stated in the act or not) shall be preferred to a construction that would not promote that purpose or object.

[14] A reading of *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd*, a decision of the Federal Court had applied the purposive interpretation approach in the interpretation of the Trade Unions Act 1959 ('the TUA 1959') and which the Federal Court ruled based on the facts of the said matter that it was a cardinal rule of interpretation of statutes that the provision had to be read as a whole. It was also held that s 12(2) of the TUA 1959 had to be liberally interpreted by the courts where the word 'shall' appeared in sub-s (3), the use of the word 'may' in the other two subsections did not give a free hand to the DG in the exercise of discretion whether or not to register. A careful reading of the said case will show that before embarking on the purposive approach Balia Yusof JCA, speaking for the Federal Court had after looking at the two schools of thought relating to statutory interpretation, said:

> ... we have always been inclined to follow purposive and literal constructions which means that the literal meaning of an Act will be followed where that meaning is in accordance with the legislative purpose (see the decisions in *United Hokkien Cemeteries, Penang v The Board, Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121; *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449).

[15] As to the said s 403(b) of the Companies Act 2016, the contention before me is whether the applicant is 'subject to the Capital Markets and

Services Act 2007'. Thus, in coming to a decision herein, this court has had to examine the said Capital Markets and Services Act 2007 ('the CMSA'). A

[16] In the preamble to the CMSA, it is stated that the CMSA is an Act 'to regulate and to provide for matters relating to the activities, markets, and intermediaries in the capital markets and for matters consequential and incidental thereto'. B

[17] Section 2 of the CMSA being the interpretation section in the said Act, defines the words 'capital markets', 'corporation', 'listed corporation', 'securities', 'stock market' and 'listed' as follows: C

'capital market' means the securities and derivatives markets;

'corporation' means any body corporate formed or incorporated or existing within or outside Malaysia and includes any foreign company but does not include: D

(a) any body corporate that is incorporated within Malaysia and is, by notice of the minister charged with the responsibility for companies published in the *Gazette*, declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any state or to be a body corporate which is not incorporated for commercial purposes; E

(b) any corporation sole;

(c) any society registered under any written law relating to co-operative societies; or

(d) any trade union registered under any written law as a trade union; F

'listed corporation' means a corporation whose securities or any class of its securities have gained admission to be quoted on a stock market of a stock exchange;

'securities' means: G

(a) debentures, stocks or bonds issued or proposed to be issued by any government;

(b) shares in or debentures of, a body corporate or an unincorporated body; or

(c) units in a unit trust scheme or prescribed investments, and includes any right, option or interest in respect thereof; H

'stock market' means a market or other place at which, or a facility by means of which:

(a) offers to sell, purchases or exchanges of securities are regularly made or accepted; I

(b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or

A (c) information concerning the prices at which or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

B 'listed', in relation to a security or a corporation, as the case may be, means such security or corporation whose securities or any class of its securities having gained admission to be quoted on a stock market of a stock exchange.

[18] I have also noted that the CMSA has in Part VII under 'provisions C applicable to listed corporations', ss 317–321 therein govern listed corporations and, inter alia, the duties imposed on them under the CMSA including the penalties thereto for failure to comply with the said provisions such as s 317A on the prohibited conduct of a director or officer of a listed corporation and s 320A for false or misleading financial statements of listed D corporation. Apart from the said sections, ss 174–182 (under market misconduct and other prohibited conduct, offences for market trading and market rigging etc), as well as ss 183–191 (on insider trading) are also applicable to listed corporations.

E **[19]** This court was referred by counsel for SSSSB to the Companies Commission of Malaysia consultation document which had discussed the proposed amendments to the Companies Act 2016 wherein mention was made as to the JM not being available to companies under the CMSA. With respect, I am of the view that this is not a conclusive authority for this court to F determine if the CMSA is applicable to listed companies but is merely a persuasive document which this court can take note of.

[20] On the other hand, the applicant's counsel had also attempted to G persuade this court to, inter alia, apply the maxim *noscitur a sociis* and to construe the CMSA to construe the phrase 'companies subject to the Capital Markets and Services Act 2007' as companies that are 'licensed and regulated under the CMSA'. The said maxim *noscitur a sociis* which is the 'associated words rule' was explained by the Federal Court in *Maple Amalgamated Sdn Bhd* H *& Anor v Bank Pertanian Malaysia Bhd* [2021] MLJU 1245 wherein the court had quoted the learned author Ruth Sullivan and stated:

> According to learned author Ruth Sullivan in *Statutory Interpretation* (2nd Ed, Irwin Law Inc, 2007), at p 175, this cannon of construction operates thus:
>
> I > When two or more words or phrases perform a parallel function within a provision and are linked by 'and' or 'or', the meaning of each is presumed to be influenced by the others. The interpreter looks for a pattern or a common theme in the words or phrases, which may be relied on to resolve ambiguity or to fix the scope of the provision.

[21] After considering the said maxim, I hold that the same does not apply in the present circumstances as the said subsections referred to ie s 403(a) and (b) of the Companies Act 2016 are two different subsections/provisions in the Companies Act 2016 and thus are meant to be read disjunctively and of which one subsection is not meant to influence the other.

[22] This court has also examined the Corporate Law Reform Committee final report on the Companies Act 1965 entitled 'Review of the Companies Act 1965 — Final Report' and the Consultative Document on the Proposed Companies Act (Amendment) Bill 2020 and finds that the same do not assist the applicant's contentions as it is only a proposal made in adopting the Companies Act 2016 and that not all the proposals referred to therein have been adopted and is again with respect, only a document of persuasive value for this court to come to its decision herein.

[23] Upon reading the CMSA as a whole and in particular the above sections referred to above, this court concludes from a plain reading of the CMSA, that it is, inter alia, clear that any body corporate formed or incorporated or existing within or outside Malaysia which will include any foreign company which are not a corporation sole, co-operative society or trade union whose shares are quoted on a stock market will be governed by the CMSA. On this point, I also take some guidance from *Ng Kim Fong v Menang Corporation (M) Bhd* [2020] MLJU 644 where the Court of Appeal had stated:

> [5] The respondent is listed on the main board of Bursa Malaysia Securities Bhd ('Bursa') and are subject to the main market listing requirements of Bursa, the Companies Act 2016 and the Capital Market and Services Act 2007 ('the CMSA'). Being a public listed company, the respondent is compelled to make disclosure of all relevant information and events pertaining, inter alia, to its business and of its acquisition and disposal of assets.

[24] In coming to this court's decision herein, the following various cases have been considered by this court:

(a) *Re A Panjaram* [1992] 1 MLJ 467, where KC Vohraj J (as he then was) held that a court may not add words in a statute save by way of necessary implication;

(b) *Tenaga Nasional Bhd v Ichi-Ban Plastic (M) Sdn Bhd and other appeals* [2018] 3 MLJ 141; [2018] 3 CLJ 557 where the Federal Court held that it is a principle of great antiquity that where the language of the statute is clear, effect must be given to it and no outside consideration can be called in aid to find that intention;

(c) *Gulf Business Construction (M) Sdn Bhd v Israq Holding Sdn Bhd* [2010] 5 MLJ 34 where the Court of Appeal held:

A [16] The 'literal' rule or the 'plain meaning' rule as is known in America is best illustrated by referring to the speech of Tindal CJ in *The Sussex Peerage* [1844] 11 Cl & Fin 85, at p 143. There his Lordship said this:

B > ... the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver;

C (d) *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721, where Vernon Ong FCJ speaking for the Federal Court had held:

D > [30] In our opinion, the rules governing statutory interpretation may be summarised as follows. *First, in construing a statute effect must be given to the object and intent of the legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used* (emphasis mine). Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed. Even if the words in a statute may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited'. *Third, the relevant provisions of an enactment must be read in accordance with the legislative purpose and applies especially where the literal meaning is clear and reflects the purposes of the enactment* (emphasis mine). This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance. An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, so as to give full meaning and effect to it in the achievement to the declared objective. As such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found in the statute itself;

(e) *Faekah bt Hj Husin & Ors v Menteri Besar Selangor (Pemerbadanan)* [2021] 3 MLJ 893 where the Federal Court, in a judgment pronounced through Rohana Yusuf PCA, stated at para 47:

> [47] The principle of legal interpretation is trite. It is not the function and duty of a court to read into the law, visibly missing provisions into the legislation. The Federal Court had in *Kuala Lumpur, Klang & Port Swettenham Omnibus Co Bhd v Transport Workers' Union* [1971] 1 MLJ 102, propounded this legal principle relating to power of a body established by law, when it stated in that case, 'The powers and duties of an authority or body established, appointed or constituted under a statute, on the other hand, are contained in the statute itself ...'. That is the correct proposition to speak of a statutory authority, as a body established under that statute.

and further down at paras 51 and 52 therein:

> [51] Very recently, this general rule of interpretation, was reiterated in the judgment of this court delivered by Vernon Ong FCJ in *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721 ...
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> ...
>
> [52] The court shall at all times give effect to the intent and object of the legislature in the exercise of interpreting a statute. Indisputably there is no provision establishing a BOD or conferring power to such board in the Enactment before us. It is not for the court to supplant what the law never have or never intend to legislate in the first place.

[25] Applying the principles of statutory interpretation from the aforesaid cases, I have carefully considered the applicant's counsels arguments but am unable to agree with the applicant with regards the statutory interpretation on the applicability of the CMSA only to companies that are involved in activities or markets in the capital market or which are intermediaries in the capital market as suggested by the applicant's counsel based on the findings of this court as to the applicability of the CMSA as mentioned above.

[26] In coming to this court's decision, I have also perused the article relied on by the applicant's counsel entitled Dr Cheong May Fong 'Purposive Approach and Extrinsic Material in Statutory Interpretation: Developments in Australia and Malaysia [2018] JMJ' which discussed the approach taken by the Malaysian courts on statutory interpretation and the applicability of s 17A of the Interpretation Acts in order to support the applicant's contentions. I have noted the learned authors views but I hold that as a court of law, this court is bound by the doctrine of *stare decisis* to adopt the statutory interpretations as provided by the appellate courts, in particular the Federal Court being our apex court and with respect I am therefore not inclined to follow the view of the

learned author in the said article in light of our over whelming local jurisprudence on this subject.

[27] I cannot therefore agree with the applicant's contention that s 403(b) of the Companies Act 2016 is general in nature or adopts a broad brush categorisation as opposed to s 403(a) of the Companies Act 2016 which , in the words of the applicant's counsel, 'seeks to carve out entities that are licensed and regulated by Bank Negara from judicial management' as I am of the opinion that the words in s 403(b) of the Companies Act 2016 are clear to its meaning. On this, I agree with SSSSB's counsel that there is an established principle of statutory interpretation that where Parliament includes a particular term in on part of a statute but omits it in another part of the same, it must be presumed that Parliament acted intentionally in doing so, see the Federal Court case of *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2018] 2 MLJ 22 held:

> It is trite that they mean different things when both words appear in the same statute as it does in the present act. On this point in *Lee Lee Cheng (F) v Seow Peng Kwang* [1960] 1 MLJ 1, Thomson CJ observed at p 3:
>
> > It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here, used repeatedly ...

[28] As to the reference to *Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd and another suit* [2019] 8 MLJ 473 it is worth noting that the said case was decided prior to the amendments to of sub-ss (a) and (b) of s 403 of the Companies Act 2016 when the word 'and' was previously used between the said sub-ss (a) and (b) which has since been replaced by the word 'or' since 15 January 2020 as mentioned earlier and that this court must give due recognition to that fact and consequently read the said sub-ss (a) and (b) disjunctively.

[29] Accordingly, this court cannot read words into s 403(b) of the Companies Act 2016 which are in my view plain, clear and unambiguous. I thus hold that s 403(b) of the Companies Act 2016 applies to all companies whose shares are quoted on a stock market of a stock exchange as is the situation here with the applicant, and that the applicant as a listed company under the CMSA cannot avail himself of the judicial management corporate rescue mechanism under Subdivision 2 of Division 8 Part III of the Companies Act 2016.

SECURED CREDITORS AND POSITION OF MBB AND SSSSB

[30] I have viewed exh A1 and A8 in encl 10, and find that Maybank had granted the applicant a term loan 1 and term loan 2/letter of credit and a bank

guarantee facility (performance bond/counter guarantee) ('banking facilities') which were secured by a memorandum of deposit dated 4 September 2014 and a supplemental memorandum of deposit dated 30 October 2015 ('Maybank MOD').

[31] This court has also noted that a settlement agreement dated 17 September 2019 (settlement agreement was entered into between Maybank and the applicant and that a proposed corporate exercise was to be undertaken by the applicant ('proposed corporate exercise) as seen in exh A12 of encl 10 which were varied by Maybank's letter dated 9 October 2019 as found in exh A13 of encl 10 and that due to a default of the settlement agreement vis-a-vis the proposed corporate exercise being aborted, Maybank had commenced an action at the Kuala Lumpur High Court vide Suit No WA-22NCVC-545–11 of 2020 against the applicant claiming the sum of RM113,957,000 and that the same is currently pending.

[32] It is therefore clear that Maybank is a secured creditor of the applicant.

[33] As for SSSSB, it is undisputed that the charge under MOD 1, MOD 2, loan 1 and loan 2 notes have not been registered. Section 325(1) of the Companies Act 2016 provides that:

> (1) A company that creates a charge over its property or any of its undertakings to which this section applies shall lodge within thirty days from the creation of the charge, together with the prescribed fee with the registrar for registration, a statement of particulars of the charge in the form and manner as may be determined by the registrar.

[34] Thus, based on s 325(1) of the Companies Act 2016, it is the duty of the applicant to register the charge and I hold that the failure to do so does not affect the validity or the effect of the charge as there is no legal provision or authority shown to this court by the applicant's counsel to support such a contention.

[35] In any event, loan 2 note and the MOD 2 have been registered with the Suruhanjaya Syarikat Malaysia ('SSM') by the lodgement of the statement of particulars as seen in exh A7 in encl 55.

[36] I am of the view that it would be improper for the applicant to now come to this court to argue that the said charge in favour of SSSSB has not been registered and thus SSSSB is not a secured creditor.

[37] This court therefore holds that in the circumstances, SSSSB is a secured creditor of the applicant with a registered charge.

[38] In *Tidalmarine Engineering Sdn Bhd v Portneka Sdn Bhd & Anor* [2020] MLJU 2526, this court has held in dealing with s 409(b) of the Companies Act 2016 that:

> [21] Following from the provisions of s 409 of the CA 2016, it is clear that the said section mandates that the court is to dismiss an application for a judicial management order by the use of the word 'shall' therein subject to the fact that this court is satisfied that either of the sub-ss (a) or (b) as contained therein are in existence.

[39] If I may add further, the usage of the word 'secured creditor' in the said s 409(b) of the Companies Act 2016 shows that Parliament had in its wisdom specifically and expressly included the term 'secured creditor' to the said subsection and thus confined the right to object to a judicial management application to only two categories of creditors which are (a)'a receiver or receiver and manager referred to in sub-para 408(1)(b)(ii) (who) has been or will be appointed; and (b) 'a secured creditor'. This court must therefore take cognisance of the same and apply the literal approach in reading the said subsection especially where the construction of the words therein are plainly clear and unambiguous.

[40] From the entire circumstance of the matter before this court, I thus hold that MBB and SSSSB are secured creditors who have a right to veto the JM application herein and as they have done so, the applicant is not entitled to obtain a judicial management order pursuant to ss 403(b) and 409(b) of the Companies Act 2016 and respectively and that this court must thus dismiss the OS herein with costs of RM10,000 to be paid by the applicant to each of the other parties.

Application dismissed with costs.

Reported by K Selvaraju